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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,282	07/29/2003	Ronald L. Prouty	PRO-007	5705
32211	7590	03/03/2006	EXAMINER	
MARK S. HUBERT 3816 NE 136TH PLACE PORTLAND, OR 97230				MORAN, KATHERINE M
ART UNIT		PAPER NUMBER		
3765				

DATE MAILED: 03/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/629,282	PROUTY	
	<b>Examiner</b>	<b>Art Unit</b>	
	Katherine Moran	3765	

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 12 December 2005.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 4,6,8 and 10-25 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2 and 5 is/are rejected.
- 7) Claim(s) 3,7 and 9 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 09 July 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's non-compliant amendment of 9/28/05 and subsequent amendment of 12/12/05 have been received and reviewed. In the response of 9/28, Applicant submitted a terminal disclaimer as well as an affidavit under 37 CFR 1.131. The response of 12/12 included Applicant's remarks regarding the outstanding claim rejections. It is noted that the Prouty reference is a statutory bar under 35 U.S.C. 102(b) and thus cannot be overcome by an affidavit or declaration under 37 CFR 1.131.

### ***Claim Objections***

1. Claim 9 is objected to because of the following informalities: claim 9 is redundant since the same subject matter is also recited in claim 7. It is suggested that claim 9 be cancelled. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Prouty (U.S. 6,298,490). Prouty discloses the invention as claimed. Prouty teaches a

two sided glove comprising a palm piece 1 containing an inner thumb piece 14 and adapted to form a first finger pocket and a fourth finger pocket, an outer thumb piece 12 stitched to the inner thumb piece, two side thumb pieces 16,17 stitched to the inner thumb piece and the outer thumb piece, and a middle fingers piece 20-22 stitched to the palm piece and adapted to form a second finger pocket and a third finger pocket. The glove has an outer and inner surface and the stitching is concealed from the glove's outer surface by virtue of the stitching being performed on the inside surfaces. Wear guard piece 24 is sewn onto the palm piece and is patterned to conform to areas of the glove subject to excessive wear.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Prouty '490 in view of Battle (U.S. 6,260,203). Prouty discloses the invention substantially as claimed. However, Prouty doesn't teach a cuff piece stitched to the palm piece. Battle teaches a cuff piece 38 stitched to the palm piece 16. The cuff piece allows for the adjustment of the glove around the wrist area and prevents debris from entering the glove. Therefore, it would have been obvious to one of ordinary skill in the art to

provide Prouty's glove with a cuff piece in order to provide a securing means which protects the inner hand.

***Allowable Subject Matter***

6. Claim 3 and claims 7 or 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

7. Applicant's arguments filed 12/12/05 have been fully considered but they are not persuasive. Applicant argues that the differences between the cited reference of Prouty '490 and the present invention are best illustrated by the differences in the drawings. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the palm piece of Prouty has only a first finger stall and an inner thumb piece while the palm piece of the present invention has an inner thumb piece and both a first finger pocket and fourth finger pocket) are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). It is also noted that the phrase "adapted to form" does not impart a structural limitation to the claim. Claim 1 recites "a palm piece containing an inner thumb piece and adapted to form a first finger pocket and a fourth finger pocket" and "a middle fingers piece

stitched to said palm piece and adapted to form a second finger pocket and third finger pocket". The palm piece is certainly adapted to form first and fourth finger pockets in that it may be manipulated or attached to additional glove elements in such a way that finger pockets are formed. The Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. The following are examples of language that may raise a question as to the limiting effect of the language in a claim: "adapted to" or "adapted for" clauses. See MPEP 2106.

Applicant's arguments referred to a declaration under 37 CFR 1.130(a) to disqualify commonly owned prior art. As noted above, the Prouty reference is a statutory bar under 35 U.S.C. 102(b) and thus cannot be overcome by an affidavit or declaration under 37 CFR 1.130. The following excerpt is taken from MPEP 716.10:

"When any claim of an application or a patent under reexamination is rejected under 35 U.S.C. 103 on a U.S. patent or U.S. patent application publication which is not prior art under 35 U.S.C. 102(b), and the inventions defined by the claims in the application or patent under reexamination and by the claims in the patent or published application are not identical but are not patentably distinct, and the inventions are owned by the same party, the applicant or owner of the patent under reexamination may disqualify the patent or patent application publication as prior art."

***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications should be directed to Primary Examiner Katherine Moran at (571) 272-4990. The examiner can be reached on Monday-Thursday from 8:30 am to 6:00 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert, may be reached at (571) 272-4983. The official and after final fax number for the organization where this application is assigned is (571) 273-8300. General information regarding this application may be obtained by contacting the Group Receptionist at (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kmm

February 28, 2006



Katherine Moran

Primary Examiner, AU 3765